IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1040 of 1999
with
CIVIL APPLICATION No 4379 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NITIN A SHAH

Versus

RAJENDRA BHOGILAL KHALAS

Appearance:
1. Civil Revision Application No. 1040 of 1999
MR YF MEHTA for Petitioner No. 1
MR GAURANG H BHATT for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/02/2002

C.A.V.JUDGEMENT

DATE OF PRONOUNCEMENT : 26/02/2002

1. This Civil Revision Application is filed against the order dated 11-12/3/99 of the City Civil Court in Summary Suit no. 4484 of 1997 wherein leave to defend application was granted on condition that the present petitioner shall deposit of Rs.1,00,000/- within eight weeks.

2. The brief facts are such that the respondent herein who is the original plaintiff has filed a summary suit no. 4484 of 1997 for recovery of amount allegedly deposited by him with the present petitioner. In that suit, he also took out Summons for Judgment, to which the present petitioner filed leave to defend application, to which the present respondent filed affidavit in rejoinder and the learned City Civil Judge, after hearing the parties, granted Conditional Leave to the present petitioner upon deposit of Rs.1,00,000/- within a period of eight weeks.

3. According to the learned advocate Mr.Y.F.Mehta for the petitioner, the order of the trial court is without the exercise of jurisdiction vested in it and the order of conditional leave of Rs.1,00,000/- against the suit of Rs.1,10,000/- with the theory of defence put up by the defendant is totally arbitrary, excessive and penal and the same is required to be interfered with.

4. As against this the learned advocate Mr. Gaurang H Bhatt L.A. for the respondent relied on the judgment in case of Mrs. Raj Duggal V/s Ramesh Kumar Bansal reported in AIR 1990 S.C. 2218 and submitted that in that case also conditional leave to defend the suit was granted on depositing the amount. Therefore, according to Mr.Bhatt L.A. for the respondent, the conditional order to defend the suit granted by the learned trial court is not illegal and need not be interfered with by this court.

5. Heard the learned advocates and perused the papers. Sec. 115 of the Civil Procedure Code gives very limited scope to the High Court and only the High Court can interfere with such order which are materially illegal and irregular or the trial court has exercised the jurisdiction not vested in it or has not exercised the jurisdiction vested in it. In this case, I do not find any such lacuna and therefore there is no need for this court to interfere with the order. Apart from this also, if the authority of the Supreme Court in case of Mrs.Raj Duggal (supra) is seen, it provides conditional leave to the defendant to defend the suit. Therefore, also the order of the City Civil Court need not be

interfered with. Therefore, this Civil Revision Application requires to be dismissed.

6. Accordingly, this Civil Revision Application is dismissed. Rule discharged. Stay granted earlier is vacated. In view of this order in Civil Revision Application, Civil Application No. 4379 of 2001 also stands disposed of.

(SHARAD D DAVE, J)

srilatha

At the request of Mr.Y.F.Mehta L.A. for the petitioner, this order is stayed for 8 weeks as the petitioner's advocate wants to approach the Higher Forum.

26/02/2002 (SHARAD D DAVE, J)